



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 491

IN THE MATTER OF THOMAS P. WALSH

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Thomas P. Walsh ("Rep. Walsh") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Walsh had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Walsh violated G.L. c. 268A, §'3 and 23.

The Commission and Rep. Walsh now agree to the following findings of fact and conclusions of law:

1. Rep. Walsh has served in the state legislature from January 1987 to the present. During that time, Rep. Walsh has served on various committees, including the Joint Committee on Insurance where he has served as vice chairman since 1992.
2. Rep. Walsh has sponsored several bills affecting the insurance industry.
3. In addition, Rep. Walsh, as a member of various committees, has participated in many hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Rep. Walsh also has voted on bills of interest to the insurance industry when they reached the House floor.
4. During the period here relevant, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. During the period here relevant, Ralph Scott ("Scott") was a Hancock lobbyist. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. Hancock offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, Hancock's activities are more comprehensively regulated by Massachusetts than by any other state. At all relevant times, Sawyer and Scott were registered legislative agents (for Hancock) in Massachusetts.
5. During the period here relevant, Andrew Hunt ("Hunt") was a registered legislative agent for the Massachusetts Medical Society.
6. During the period here relevant, William Carroll ("Carroll") was a registered legislative agent for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of life insurance companies doing business in Massachusetts.
7. At all relevant times, Rep. Walsh knew that Sawyer and Scott were lobbyists for Hancock. Rep. Walsh also knew that Hunt was a lobbyist for the Massachusetts Medical Society and that Carroll was a lobbyist for

LIAM. On occasion, these individuals lobbied Rep. Walsh regarding various pieces of legislation.

8. Lobbyists are employed to promote, oppose or influence legislation.

9. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

10. Sometime in 1989, Scott provided Rep. Walsh and a guest of the representative with dinner and admission to Hancock's private box at the Boston Garden to watch a Bruins game. Admission to Hancock's box was alone valued at \$128 for Rep. Walsh and his guest. The cost of the dinner is not known.^{1/}

11. In January 1990, Sawyer provided Rep. Walsh and his wife with dinner and admission to Hancock's private box at the Boston Garden to watch a Celtics game. Admission to Hancock's box was alone valued at \$141 for Rep. Walsh and his wife. The cost of the dinner is not known.^{2/}

12. In November 1991, Sawyer provided Rep. Walsh with two Hancock tickets to a Harry Connick, Jr. concert at the Wang Center. These two tickets were worth \$68^{3/}.

13. In December 1992, Sawyer provided Rep. Walsh with two Hancock tickets for the *Nutcracker* at the Wang Center. These two tickets were worth \$92.^{4/}

14. Between March 10, 1993 and March 15, 1993, Rep. Walsh and his spouse stayed at the Plantation Resort at Amelia Island, Florida, where he attended an educational conference sponsored by the Conference of Insurance Legislators which ran from March 11th to March 14th. Rep. Walsh stayed at the Plantation Resort with a number of other legislators and Massachusetts lobbyists.

On the evening of March 11, 1993, Rep. Walsh and his wife ate dinner at the Plantation Resort with Sawyer and a group of Massachusetts legislators. Sawyer paid for the dinner. The Walshes' pro rata share of the cost of the dinner was \$104.

On the evening of March 12, 1993, Rep. Walsh and his wife ate dinner at the Ritz Carlton with a group of Massachusetts legislators and lobbyists. Rep. Walsh did not pay for his or his wife's meal. Rep. Walsh testified that, although he knew that several Massachusetts lobbyists were at the meal, he did not know who paid for the meal. Carroll, the lobbyist representing LIAM, paid for this dinner.^{5/} The total cost of the dinner was approximately \$3,000. The Walshes' pro rata share of the cost of the dinner was approximately \$150.

While at Amelia Island, Rep. Walsh golfed twice. On March 11, 1993, Rep. Walsh golfed with Sawyer and two other Massachusetts legislators. Rep. Walsh's golf fees were paid for by Sawyer at a cost of \$80. On March 15, 1993, Rep. Walsh golfed with Hunt and two other Massachusetts legislators. Rep. Walsh's golf fees were paid for by Hunt at a cost of \$80.

15. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

16. Massachusetts legislators are state employees.

17. Anything worth \$50 or more is of substantial value for §3 purposes.^{6/}

18. By accepting a total of approximately \$693 in drinks, meals, golf and theater entertainment from Sawyer, Scott and Hunt^{7/}, all while Rep. Walsh was in a position to take official actions which could benefit those legislative agents and/or their principals, Rep. Walsh accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Rep. Walsh violated §3(b).^{8/}

19. As the facts above indicate, Rep. Walsh received, in addition to the \$693 in gratuities from Sawyer, Scott and Hunt, a total of \$150 in gratuities of \$50 or more, where he did not know the specific identity of the

source of the gratuities.^{9/}

20. Section 23(b)(3) prohibits a public employee from knowingly or with reason to know acting in a manner which would cause a reasonable person knowing all of the circumstances to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties.

21. By accepting gratuities of \$50 or more in value where he did not know the specific identity of the donor, but had reason to know that the donors were Massachusetts lobbyists, Rep. Walsh acted in a manner which would cause a reasonable person knowing all these facts to conclude that the lobbyists present could improperly influence him in the performance of his official duties.^{10/} In other words, Rep. Walsh knew or had reason to know that his actions would create an appearance of favoritism. In so doing, Rep. Walsh violated §23(b)(3).^{11/}

22. The Commission is aware of no evidence that the gratuities referenced above were provided to Rep. Walsh with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. Also, the Commission is aware of no evidence that Rep. Walsh took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{12/}

23. Rep. Walsh cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Walsh, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Walsh:

(1) that Rep. Walsh pay to the Commission the sum of two thousand, five hundred dollars (\$2,500.00) for violating G.L. c. 268A, §3(b) and §23(b)(3);^{13/} and

(2) that Rep. Walsh waive all rights to contest the findings of fact, conclusions of law, and terms and conditions contained in this agreement in this or any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} This dinner is not identified in Scott's records. Rep. Walsh voluntarily disclosed the dinner in his testimony before the Commission. He had no recollection as to its cost, but believed it did not equal or exceed \$50.

^{2/} This dinner is not identified in Sawyer's records. Rep. Walsh voluntarily disclosed the dinner in his testimony before the Commission. He had no recollection as to its cost, but believed it did not equal or exceed \$50.

^{3/} Rep. Walsh testified that Sawyer informed him that the tickets were provided to Hancock free-of-charge in return for Hancock's support of the Wang Center's restoration and that, thus, Rep. Walsh believed that the value of the tickets was zero. Because Sawyer has refused to testify in this matter, the Commission has been unable to confirm Rep. Walsh's testimony on this point. However, regardless of whether Hancock paid for the tickets and regardless of what Sawyer may have told Rep. Walsh, the value of the tickets for G.L. c. 268A purposes was the price at which such tickets were available for purchase by the general public.

^{4/} See footnote 3.

^{5/} The Commission has evidence Carroll subsequently received contributions of \$500 and \$600 from two of the Massachusetts lobbyists who were at this meal.

^{6/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{7/} \$128, Scott, 1989; \$141, Sawyer, 1990; \$68, Sawyer, 1991; \$92, Sawyer, 1992; \$184, Sawyer, 1993; and \$80, Hunt, 1993.

^{8/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply.

Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

Rep. Walsh has argued that §3 does not apply to meals given to legislators. There is nothing in the legislative history regarding §3 or the language of §3 to support that argument. In the Commission's view, §3 applies to any form of entertainment, including meals, given to any public official.

On the present facts, §3 applies to the lobbyists entertaining Rep. Walsh where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

^{9/} The Walshes' \$150 share of the March 12, 1993 dinner paid for by Carroll.

^{10/} Moreover, no matter how carefully this matter is investigated, the possibility can never be eliminated that Rep. Walsh would later be told of the specific sources of the various gratuities described above. This only adds to the appearance concern created by such conduct.

^{11/} This conduct also raises issues under §3, discussed above. Nothing in §3 requires that the public official know the source of the gift. All that is required is that the public official know that he is receiving the gift for or because of his position. On the foregoing facts, that could be inferred even though Rep. Walsh did not know the specific identity of the donor. In any event, because this is a matter of first impression, the Commission has decided to resolve this conduct pursuant to §23.

^{12/} As discussed above in footnote 8, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, and such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest of law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyists and Rep. Walsh.

^{13/} This amount is approximately three times the value of the \$843 in prohibited gratuities received by Rep. Walsh in violation of §3 and §23(b)(3). It represents both a disgorgement of the gratuities and a civil sanction.